

Budget Process Reform: Proposals and Legislative Actions in 2012

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Summary

An array of budget process reform proposals are put forth each year seeking to refine or modify the existing constitutional requirements, laws, and rules that make up the federal budget process. This report identifies, tracks, and explains current budget process reform proposals reported from committee or considered on the floor during 2012. The proposals are organized into categories related to the existing budget process. When appropriate, a brief description of the current process is provided.

Measures included in this report are H.R. 3575, the Legally Binding Budget Act of 2011; H.R. 3521, the Expedited Legislative Line-Item Veto and Rescission Act of 2011; H.R. 3578, the Baseline Reform Act of 2012; H.R. 3582, the Pro-Growth Budgeting Act of 2011; and H.R. 3581, the Budget and Accounting Transparency Act of 2011.

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An array of budget process reform proposals are put forth each year seeking to refine or modify the existing constitutional requirements, laws, and rules that make up the federal budget process. Some proposals may be designed to alter the budget process, for example attempting to improve transparency or oversight, perhaps by requiring additional information when weighing the merits of a measure. Other proposals may seek to alter the budget process in an effort to produce specific budgetary outcomes, for example by creating enforceable limits on spending or revenue levels.¹

Methods of Reforming the Budget Process

Altering the existing budget process can be achieved in a variety of ways. The House or Senate may adopt or amend a rule, either by agreeing to a freestanding simple resolution or by amending the chamber's standing rules. In addition, the House and Senate might agree to a concurrent resolution creating a rule enforceable in one or both chambers. For example, the annual concurrent budget resolution often includes rule-making provisions altering the congressional budget process.

The budget process may also be amended in statute, requiring the signature of the President or the support of the two-thirds of each chamber required to override a veto. Amending the budget process in statute may be accomplished either in the form of freestanding legislation or as a provision in another measure, such as an appropriations bill or a measure to increase the debt limit.

The budget process can also be altered more informally through changes in practice. For example, the House majority party leadership has released specific protocols, which although not formally enforceable on the floor, may govern the practices or customs of the chamber.²

Budget Process Reform Action in 2011

Congress voted on an array of budget process reforms during 2011. In its rules package for the 112th Congress, the House agreed to several rules changes affecting the congressional budget process, such as a prohibition against certain amendments to general appropriations bills.³ In addition, the House and Senate voted on a number of changes that were not adopted, including provisions in H.Con.Res. 34, a budget resolution for FY2012, and H.R. 2560, the Cut, Cap, and Balance Act of 2011. The Budget Control Act of 2011 (BCA), which was signed into law on August 2, 2011, significantly changed the federal budget process. Among other things, it created statutory discretionary spending limits, and created a Joint Select Committee on Deficit Reduction tasked with developing legislation that would reduce the deficit.⁴ Pursuant to the BCA, both the House and Senate voted on an amendment to the Constitution that would require a balanced federal budget.⁵

¹ Further analysis of why reform may be needed is beyond the scope of this paper.

² See <http://www.majorityleader.gov/protocols/>.

³ For more information, see CRS Report R41926, *House Rules Changes Affecting the Congressional Budget Process Made at the Beginning of the 112th Congress*, by Bill Heniff Jr.

⁴ P.L. 112-25. For more information about the affect of the Budget Control Act on the federal budget process, see CRS Report R41965, *The Budget Control Act of 2011*, by Bill Heniff Jr., Elizabeth Rybicki, and Shannon M. Mahan.

⁵ For more information on balanced budget amendments, see CRS Report R41907, *A Balanced Budget Constitutional Amendment: Background and Congressional Options*, by James V. Saturno and Megan Suzanne Lynch.

Budget Process Reform Actions in 2012

The following section identifies, tracks, and explains current budget process reform proposals reported from committee, or considered on the floor during 2012. The proposals are organized into categories related to the existing budget process. When appropriate, a brief description of the current process is provided.

The Congressional Budget Resolution

The Budget Act of 1974 provides for the annual adoption of a concurrent resolution on the budget as a mechanism for coordinating subsequent congressional decision making on budgetary matters. It is not a law—it is not signed by the President nor can it be vetoed. Instead, its purpose is to establish a framework within which Congress considers legislation dealing with spending and revenue legislation.

The budget resolution includes enforceable levels of overall federal spending and revenue, as well as spending limits for each committee. The method in which the levels included in the budget resolution are enforced is by Members of Congress raising points of order against any subsequent legislation that is being considered on the floor, if it would violate the spending or revenue levels agreed to in the budget resolution. Such points of order, however, may be waived, either by a simple majority in the House or by three-fifths in the Senate.

Budget process reform proposals often seek to alter the content, characteristics, or consideration of the budget resolution. Current support for such reform efforts may be strengthened by the fact that the House and Senate did not agree to a budget resolution for FY2011 or FY2012.

The Legally Binding Budget Act of 2011

On January 23, 2012, the House Rules committee held a mark-up and ordered reported H.R. 3575, the Legally Binding Budget Act of 2011, which would require that the budget resolution be a joint resolution sent to the President for signature. As stated above, the budget resolution is presently a *concurrent* resolution, considered by both the House and Senate, but not sent to the President for his signature or veto. Instead, the President submits his preferred budgetary levels in his annual budget submission, as required by law, and in addition, he may sign or veto any legislation that Congress enacts implementing budgetary policy. By replacing the concurrent resolution with a joint resolution, H.R. 3575 would grant the President an additional role in setting preferred budgetary levels by granting him a direct role in deliberations on the congressional budget resolution.

The new measure, H.R. 3575, does not appear to alter the enforcement of the budget resolution. Although the measure would create the possibility for the budget resolution to become statute, the spending and revenue levels in the budget resolution would still be enforced by points of order, not by sequestration or any other statutory enforcement mechanism. Points of order, therefore, could still be waived, regardless of the budget resolution being in statute, because of Congress's constitutional authority over its own rules of procedure.⁶

H.R. 3575 also provides that in the event the joint budget resolution were vetoed by the President, the levels in the resolution would still be enforceable in the House and Senate in the way that a concurrent budget resolution presently operates. The House Rules Committee reported an

⁶ “Each House may determine the Rules of its Proceedings.” Article I, Section 5.

amendment to the measure stating that the levels in the resolution would be enforceable in the House and Senate either after enactment, or 15 days after presentment to the President.

The Appropriations Process

Expedited Legislative Line-Item Veto and Rescissions Act of 2011

Congress has the power to initiate rescission legislation that would cancel previously enacted budget authority. The President may propose rescissions, but if Congress does not enact the proposed rescission within 45 calendar days of continuous session after the message is received, the President must make the funds available for obligation.⁷ There is no requirement that Congress vote on such a rescission request, but if the rescission is sent pursuant to procedures outlined in the Impoundment Control Act, the recessions may be considered under expedited procedures.⁸

Such a rescission request from the President is currently submitted in the form of a special message including specific information about the rescission, such as the amount of the rescission, the account to which the rescission applies, reasons for the rescission, and, to the extent practicable, the estimated fiscal, economic, and budgetary effects of the rescission.

Although now defunct, in 1996 the President was given the power of the “line item veto,” which empowered him, after signing a bill, to cancel certain types of provisions. This power was ruled unconstitutional by the United States Supreme Court in the case *Clinton, et al. v City of New York, et al.*, which held that the Line Item Veto Act violated the Presentment Clause of the Constitution.⁹

H.R. 3521, the Expedited Legislative Line-Item Veto and Rescissions Act of 2011, passed the House on February 8, 2012, by a vote of 254-173, after being reported from the House Budget Committee on January 7, 2012, and the House Rules Committee on February 2, 2012. Among other things, the bill seeks, generally, to maintain the President’s current ability to request rescissions, and to enhance Congress’s ability to take action on such rescissions by including expedited procedures for the consideration of such Presidential requests. The procedures prescribed in H.R. 3521 would expire at the end of 2015 and would apply only to rescissions of discretionary spending.

The measure states that within 10 days of enactment of any spending measure, the President may submit a special message proposing rescissions to such measure. H.R. 3521 prescribes the contents of such a message, requiring more information than is required under current law, such as the account, project, or activity within the account, to which the rescission applies. H.R. 3521 allows the President to submit a second rescission message related to the same spending measure, but prohibits the message from including any rescissions included in the first package. H.R. 3521 states that if a proposed rescission has not yet been enacted, the President must make

⁷ Title X is referred to as the Impoundment Control Act. 2 U.S.C. §681 et seq.

⁸ Ibid.

⁹ The Clause requires that every bill that has passed the House and Senate in identical form must be presented to the President for approval or veto before becoming law. This has been interpreted by the Court as prohibiting the President from unilaterally amending or repealing any provisions in the measure. For more information, see CRS Report 98-690, *Line Item Veto Act Unconstitutional: Clinton v. City of New York*, by Thomas J. Nicola.

the funds proposed to be rescinded available no later than 60 days following the enactment of the original appropriations measure.¹⁰

H.R. 3521 includes expedited procedures for the consideration of such rescission packages in the House and Senate. The procedures provide for automatic discharge of the measure from committee if the committee does not report the package within a specified period. Further, H.R. 3521 would limit House and Senate floor debate and prohibit amendments to the rescission measure.

H.R. 3521 requires that any rescissions enacted under this procedure be “dedicated only to reducing the deficit or increasing the surplus.” The measure seeks to achieve this by requiring allocations associated with the budget resolution, as well as appropriations subcommittee allocations, to be revised downward to reflect savings achieved from the rescissions. In addition, the enactment of the rescission bill would similarly revise downward the statutory discretionary spending limits to reflect the savings achieved from the rescissions.¹¹

Baselines, Scoring, and Economic Analysis

The Baseline Reform Act

A baseline is a projection of future federal spending and revenue levels based on current law. It is intended to provide information on future deficits or surpluses and to act as a benchmark for comparing proposed changes to budget policy. As described by the Congressional Budget Office (CBO),

The baseline is intended to provide a neutral, nonjudgmental foundation for assessing policy options. It is not “realistic,” because tax and spending policies will change over time. Neither is it intended to be a forecast of future budgetary outcomes. Rather, the projections ... reflect CBO’s best judgment about how the economy and other factors will affect federal revenues and spending under existing policies.¹²

Specific rules for calculating the baseline appear in Section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985.¹³ In projecting the baseline, direct spending and receipts are generally assumed to continue at levels specified in existing law. These projections are based upon economic assumptions (e.g., economic growth, inflation, and unemployment) and other technical assumptions (e.g., demographic and workload changes) about future years.

Discretionary spending levels are determined annually, so there is no obvious consensus as to what levels of discretionary spending best represent current policy. The level of discretionary spending, however, is assumed to stay constant in inflation-adjusted terms, meaning that the current year’s spending level will be adjusted “sequentially and cumulatively” for inflation and other factors.¹⁴ Actual spending and revenue levels are not set by the baseline; they are set by

¹⁰ H.R. 3521 also provides that the funds be released from obligation when the President determines that the continued withholding or reduction no longer advances the purpose of legislative consideration of the approval bill or on the last day that the President determines the obligation of funding in question can no longer be fully accomplished in a prudent manner before its expiration.

¹¹ Such requirements would not prevent rescissions initiated by Congress outside of this process from being used as offsets for other spending.

¹² CBO, *The Budget and Economic Outlook*, January 2001, p. 7. Instructions for creating the baseline estimates are contained in the Budget Enforcement Act (BEA) as amended.

¹³ Title II of P.L. 99-177, as amended.

¹⁴ For more information see CRS Report 98-560, *Baselines and Scorekeeping in the Federal Budget Process*, by Bill

spending and revenue legislation enacted by Congress and the President. While the Office of Management and Budget calculates their own baseline submitted with the President's budget, CBO submits the official congressional baseline to Congress in late January of each year each year as part of the Budget and Economic Outlook report.¹⁵

H.R. 3578, the Baseline Reform Act of 2012, passed the House on February 3, 2012, by a vote of 235-177, after being marked up by the House Budget Committee on December 7, 2011, and reported from committee on January 30, 2012. The measure proposes to change the calculation of the baseline by removing the inflation adjustment made to discretionary spending. By removing the annual inflation adjustment for discretionary spending from the baseline calculation, nominal dollars stay the same but the purchasing power of discretionary spending would fall as inflation occurs. In addition, by holding the level of spending constant, the spending per person would decrease as the population grows.

In the current baseline, the inflation adjustment rule is not in effect because the discretionary spending caps agreed to under the BCA have been incorporated into the baseline calculation for discretionary spending until 2021. The change to the baseline included in H.R. 3578 therefore would not be incorporated until 2022, with the exception of projected spending for "Overseas Contingency Operations," which is not subject to the discretionary spending limits.¹⁶

H.R. 3578 also requires CBO to submit a supplemental projection that assumes the extension of current revenue policy, regardless of such revenue policy being set to expire.¹⁷ Further, the measure requires CBO to submit a Long-Term Budget Outlook for the upcoming year that would cover at least the next 40 years.¹⁸

Pro-Growth Budgeting Act

After a mark up on January 24, 2012, H.R. 3582, the Pro-Growth Budgeting Act of 2011, was reported by the House Budget Committee on January 30. The bill would amend the 1974 Budget Act to require that CBO, to the extent practicable, prepare a macroeconomic impact analysis of each "major" measure reported from any House or Senate committee.¹⁹ The macroeconomic impact analysis, often referred to as a "dynamic estimate," would cover the 10-year period beginning with the first fiscal year, and the next 3 10-year periods. This information is to be prepared as a supplement, and not a replacement for estimates already required by CBO under Section 402 of the 1974 Budget Act, which requires CBO, to the extent practicable, to prepare for any measure reported from a House or Senate committee an estimate of the costs incurred in carrying out such a bill in the year it is to become effective as well as each of the next four years.

Since 2003, House Rules have required a supplementary macroeconomic impact analysis of tax legislation reported by the House Ways and Means Committee (or a reason given for why it

Heniff Jr. and CRS Report RS22045, *Baseline Budget Projections Under Alternative Assumptions*, by Gregg A. Esenwein and Marc Labonte.

¹⁵ CBO submits updates to the January baseline each year in March and August.

¹⁶ This bill may also affect the baseline treatment of spending designated as emergency.

¹⁷ Such a supplemental projection, as well as other alternative projections, has been made available in CBO's Budget and Economic Outlook Report in recent years.

¹⁸ CBO has submitted a long-term outlook report annually since 1996, although the report has not always spanned 40 years.

¹⁹ "Major" is defined as any bill or resolution if the gross budgetary effects of such measure for any fiscal year in the period for which an estimate is prepared, is estimated to be greater than .25% of the current projected gross domestic product of the United States for any such fiscal year.

cannot be prepared).²⁰ H.R. 3582 would expand the requirement for a macroeconomic impact analysis to all major measures reported from any House or Senate committee. Section 312(a) of the 1974 Budget Act requires that the enforcement of levels in the budget resolution²¹ be determined based on estimates provided by the Budget Committee. This neither requires nor prohibits the use of traditional or dynamic estimates for purposes of such budget enforcement.

H.R. 3582 also requires CBO to submit a supplemental projection that assumes the extension of current revenue policy, regardless of such revenue policy being set to expire.²² Further, the measure requires CBO to submit a Long-Term Budget Outlook for the upcoming year that would cover at least the next 40 years, as also proposed in H.R. 3578.²³

Budget and Accounting Transparency Act²⁴

H.R. 3581, the Budget and Accounting Transparency Act, was passed by the House on February 7, 2012, by a vote of 245-180 after being marked up by the House Budget Committee on January 24, 2012, and reported on January 31, 2012. The bill amends the Credit Reform Act and changes the budgetary treatment of Fannie Mae and Freddie Mac, among other things.

Most outlays and revenues in the federal budget are measured on a cash-flow basis. In other words, the amounts flowing in and out of the government are recorded in the year when those flows occur. One exception is the treatment of federal loans and federal loan guarantees since enactment of the Federal Credit Reform Act of 1990 (2 USC 661).²⁵ For federal loans and loan guarantees, only the subsidy costs inherent in those transactions are recorded on budget as outlays in the year that a loan or loan guarantee is made. Neither the amounts of the loan disbursed nor subsequently repaid enters the federal budget as an outlay.

The subsidy cost of a federal loan or loan guarantee is calculated as the difference between the net present value of future expected expenses and income. Future expenses and income are discounted using the government's expected borrowing cost. H.R. 3581 modifies the Federal Credit Reform Act by requiring expenses and income to be discounted by a rate that includes a "fair value" risk adjustment, where fair value is defined by Financial Accounting Standards #157. The proposed adjustment is intended to represent the additional compensation (risk premium) that private lenders or insurers would require to take on the risks inherent in the transaction. This change would make the cost of government loans and loan guarantees more comparable to the cost of an equivalent transaction undertaken by private lenders or insurers. According to a 2004 CBO report,

²⁰ House Rule XIII(3)(h)(2). The estimate is to be provided by the Joint Committee on Taxation (JCT). Under the Congressional Budget Act of 1974 (Section 201(f)), CBO is directed to use, exclusively, revenue estimates provided by the JCT for the purposes of revenue legislation including income, estate, gift, excise, and, payroll taxes. An overview of the macroeconomic models used in this analysis can be found in Joint Committee on Taxation, *Testimony of the Staff of the Joint Committee on Taxation Before the House Committee on Ways and Means Regarding Economic Modeling*, September 21, 2011, JCX-48-11.

²¹ Specifically, requirements in titles III and IV of the 1974 Budget Act.

²² Such a supplemental projection, as well as other alternative projections, has been made available in CBO's Budget and Economic Outlook Report in recent years.

²³ CBO has submitted a long-term outlook report annually since 1996, although the report has not always spanned 40 years.

²⁴ This section was written by Marc Labonte, Specialist in Macroeconomic Policy.

²⁵ See CRS Report RL30346, *Federal Credit Reform: Implementation of the Changed Budgetary Treatment of Direct Loans and Loan Guarantees*, by James M. Bickley.

Using Treasury rates to discount expected cash flows neglects the cost of market risk and results in the systematic understatement of costs for both direct and guaranteed loans. Using risk-adjusted discount rates, which include the cost of market risk, would correct that understatement and improve the comparability of budgetary costs for credit and other programs.²⁶

Opponents of H.R. 3581 argue that market risk is not relevant to the federal budget and a fair value adjustment would make loans and loan guarantees appear more costly than an equivalent grant or tax expenditure.²⁷ A fair value adjustment was statutorily required for the budgetary treatment of the Troubled Asset Relief Program (TARP), and CBO sometimes presents additional information on costs under a fair value adjustment in their evaluations of credit programs.

The practical effect of this change would be to increase the costs of federal loan and loan guarantees recorded in the budget, because interest rates on private loans are generally higher than government borrowing rates. CBO estimates that this change would increase recorded subsidy costs by \$55 billion in 2012.²⁸ H.R. 3581 would not change the availability of federal loans or loan guarantees through existing programs, or the interest or other fees paid by borrowers and received by the government. H.R. 3581 contains language that prevents this change from affecting budgetary enforcement rules and adjusts the discretionary spending caps created by the Budget Control Act to accommodate increases in recorded discretionary spending as a result of the subsidy re-estimates. Going forward, the change would affect the scoring of bills to create or modify loan and loan guarantee programs, however, which would affect their treatment under PAYGO rules, for example.

According to CBO, the major programs affected by H.R. 3581 would be the Federal Housing Administration's and the Department of Veteran Affairs' mortgage guarantee programs, the Department of Education's student loan programs, the Department of Agriculture's credit programs for rural utilities, and the Small Business Administration's loan and loan guarantee programs.²⁹ H.R. 3581 maintains the exemptions for the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Resolution Trust Corporation, the Pension Benefit Guaranty Corporation, national flood insurance, the National Insurance Development Fund, federal crop insurance, and the Tennessee Valley Authority from credit-reform accounting.

H.R. 3581 would also move Fannie Mae and Freddie Mac on budget for as long as they remain in federal conservatorship.³⁰ In previous fiscal years, Fannie Mae and Freddie Mac have appeared on budget only through the transfers that they have received from the Treasury Department on a cash flow basis since they were taken into conservatorship. Other provisions of H.R. 3581 would require two studies from CBO and OMB, and require federal agencies to make their budget justifications submitted to any congressional committee available online to the public on the same day. Overall, CBO estimates appropriations equal to \$14 million would be required for the next five years across relevant agencies in order to comply with all provisions of H.R. 3581.

²⁶ Congressional Budget Office, *Estimating the Value of Subsidies for Federal Loans and Loan Guarantees*, August 2004.

²⁷ James Horney, Rickard Kogan, and Paul Van de Water, *House Bill Would Artificially Inflate Cost of Federal Credit Programs*, Center on Budget and Policy Priorities, January 24, 2012.

²⁸ Congressional Budget Office, *Cost Estimate for H.R. 3581*, January 30, 2012.

²⁹ Congressional Budget Office, *Cost Estimate for H.R. 3581*, January 30, 2012.

³⁰ See CRS Report RL34661, *Fannie Mae's and Freddie Mac's Financial Problems*, by N. Eric Weiss.

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